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*Parliamentary Employment and
Staff Relations Act and
Economic Action Plan 2015
Act, No. 1*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

**PUBLIC SERVICE ALLIANCE OF CANADA, HOUSE OF COMMONS SECURITY
SERVICES EMPLOYEES ASSOCIATION, AND SENATE PROTECTIVE SERVICE
EMPLOYEES ASSOCIATION**
Bargaining Agents

and

PARLIAMENTARY PROTECTIVE SERVICE
Employer

Indexed as

Parliamentary Protective Service v. Public Service Alliance of Canada

In the matter of applications made under ss. 103 and 108 of the *Economic Action Plan 2015 Act, No. 1* and section 10 the *Parliamentary Employment and Staff Relations Act*

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Parliamentary Protective Service: George Vuicic, counsel

For the Public Service Alliance of Canada: Kim Patenaude, counsel

For the House of Commons Security Services Employees Association: Sylvain Beauchamp, counsel

For the Senate Protective Service Employees Association: Geneviève Brunet-Baldwin, counsel

Heard at Ottawa, Ontario,
November 1 to 3, 2017; April 17 and October 2, 3, 17, and 18, 2018;
and November 12 to 15, 2019.

REASONS FOR DECISION

I. Applications before the Board

[1] This decision deals with two separate applications, one by the Public Service Alliance of Canada (PSAC; file no. 425-PP-00012), filed on November 18, 2015, and the other by the Parliamentary Protective Service (PPS; file no. 425-PP-00013), filed on November 19, 2015. For the purposes of this decision, the files have been joined.

[2] The PSAC filed its application under s. 108 of the *Economic Action Plan Act 2015, No. 1* (S.C. 2015, c. 36; “*EAPA (1) 2015*”), which created the PPS and included transitional provisions for the transfer of protection services within Parliament. The PPS filed its application under s. 103 of the same Act.

[3] The *EAPA (1) 2015* transferred security employees from the House of Commons and the Senate to the PPS in the following terms :

100. (1) All of the persons who occupy a position within the Senate Protective Service or within the House of Commons Protective Service immediately before the day on which this Division comes into force occupy their position within the Service on that day.

(2) Nothing in subsection (1) is to be construed as affecting the status of any person who, immediately before the day on which this Division comes into force, occupied a position within the Senate Protective Service or within the House of Commons Protective Service, except that the person, beginning on that day, occupies their position within the Service.

[4] The PSAC submitted its application under s. 108 because as the bargaining agent for the scanner operators (now called detection specialists), it filed a notice to bargain collectively before the transitional provisions of the *EAPA (1) 2015* (sections 99 to 122) came into force. The relevant provision of s. 108 is the following :

108. If a notice to bargain collectively is given before the day on which this Division comes into force,

(a) on application by the Service or bargaining agent, made during the period beginning 120 days after the day on which this Division comes into force and ending 150 days after that day, the Board must make an order determining

(i) whether the employees of the Service who are represented by the bargaining agent constitute one or more units appropriate for collective bargaining, and

(ii) which employee organization is to be the bargaining agent for the employees in each such unit

[5] The PPS submitted its application under s. 103, the relevant provisions of which read as follows :

103. (1) *Whenever a collective agreement or arbitral award is continued in force under subsection 101(1), the Board must, by order, on application by the Service or any bargaining agent affected by the establishment of the Service,*

(a) determine whether the employees of the Service who are bound by the collective agreement or arbitral award constitute one or more units appropriate for collective bargaining;

(b) determine which employee organization is to be the bargaining agent for the employees in each such unit

[6] The parties have asked the Board to declare the composition of the units appropriate for collective bargaining for the PPS's protection employees. The Senate Protective Service Employees Association (SPSEA) and the House of Commons Security Services Employees Association (SSEA), which represent the protection officers of the Senate and the House of Commons respectively, are respondents to the PPS's application.

[7] The PPS has asked the Board to determine a single bargaining unit combining the protection officers from both houses and the detection specialists. For their part, the three bargaining agents have asked the Board to determine two bargaining units: one for the detection specialists, who would continue to be represented by the PSAC, and the other for all the protection officers, who would be represented by a bargaining agent yet to be established.

[8] Section 108 of the *EAPA (1) 2015* applies directly to the PSAC's situation. However, section 103 of the *EAPA (1) 2015* does not address the possibility of a merger of bargaining units, but rather, whether a bargaining unit should be continued or fragmented. Nevertheless, I find the Board has the authority to deal with the PPS' application, by virtue of the general powers granted under section 10 of the *Parliamentary Employment and Staff Relations Act*, R.S.C., 1985, c. 33 (2nd Supp.).

[9] The Board must rule on the composition of the units appropriate for collective bargaining by considering s. 110 of the *EAPA (1) 2015*, which reads as follows :

110. (1) *For the purposes of paragraphs 103(1)(a) and 108(a), in determining whether a group of employees constitutes a unit appropriate for collective bargaining, the Board must have regard*

to the Service's classification of persons and positions, including the occupational groups or subgroups established by it.

(2) The Board must establish bargaining units that are co-extensive with the occupational groups or subgroups established by the Service, unless doing so would not permit satisfactory representation of the employees to be included in a particular bargaining unit and, for that reason, such a unit would not be appropriate for collective bargaining.

[10] The PPS was created after the October 22, 2014, incident in which an armed man managed to enter the Centre Block of Parliament. The incident resulted in several reports that confirmed the conclusions already reached before that date, particularly by the Auditor General of Canada, which stated that it would be in the interests of Parliamentary security to integrate the different security components that have as their mission to protect Parliament.

[11] A report by the Ontario Provincial Police (OPP), which was adduced into evidence at the hearing, emphasized the importance of combining into a coherent whole the forces consisting of the Royal Canadian Mounted Police (RCMP), responsible for external security; the House of Commons security service, which at the time included protection officers and scanner operators; and the Senate security service.

[12] This was precisely the aim of the legislation: to combine the diverse components into a single service, the PPS, under the direction of RCMP officers.

[13] With this unification in mind, the PPS claims that it would be preferable to combine the three bargaining units that represent all PPS protection officers. The bargaining agents maintain that their position is preferable to ensure the satisfactory representation of the employees in collective bargaining.

II. The proceedings

[14] The parties began the proceedings with their detailed applications, filed with the Board, to which the respondents replied. I summarize in the following paragraphs the main points of the applications and the replies.

A. The PSAC's application

1. The PSAC's position

[15] Since 2003, the PSAC has represented the scanner operators (now called detection specialists), who before the PPS was created worked for the House of Commons Security *Parliamentary Employment and Staff Relations Act and Economic Action Plan 2015 Act, No. 1*

Services Directorate. In 2013, the certificate was amended to include the scanner supervisors (now detection supervisors) in the group.

[16] In its application, the PSAC highlights the differences between the tasks of the constables (now protection officers) and the detection specialists. The House of Commons protection officers do not carry out any scanning duties. The Senate protection officers carried out scanning duties before the PPS was created. When the application was made, Senate protection officers still did some scanning duties, but the evidence at the hearing showed that detection specialists now exclusively carry out scanning duties at the Senate.

[17] The PSAC submits that combining all PPS operational employees in a single bargaining unit would not ensure the proper representation of the detection specialists, contrary to the intent of s. 110(2). Because of the differences in the nature of the work, the duties, and the training requirements of detection specialists and protection officers, there is no community of interest.

[18] When the application was made, approximately 50 persons were in the scanner and scanner supervisor bargaining unit. The SSEA represented approximately 200 constables, corporals, and sergeants, and the SPSEA represented 100 constables, corporals, and sergeants. The numerous differences between the groups give rise to distinct collective bargaining priorities. Given their smaller number, including the scanners and scanner supervisors in the larger group would undermine their ability to pursue bargaining objectives effectively.

[19] The PSAC further asserts that the employees it represents wish to continue that representation.

[20] The PSAC seeks a declaration that a bargaining unit of scanners and scanner supervisors is appropriate for collective bargaining and an order certifying it as the bargaining agent for a unit described as “all employees of the Parliamentary Protective Service working as Scanners and Scanner Supervisors”.

2. The PPS’s response

[21] The PPS had already submitted an application for a single bargaining unit when it responded to the PSAC’s application (and to the submissions of the SSEA and SPSEA). According to the PPS, the submissions “... are based on the current bargaining agents’ *Parliamentary Employment and Staff Relations Act and Economic Action Plan 2015 Act, No. 1*

narrow self-interest, and do not take into account the reasons and objectives underlying the creation of the PPS ...”.

[22] Having a separate bargaining unit would frustrate the PPS’s objective of functional integration. According to the PPS, separating employees into two bargaining units (the SSEA and SPSEA had already proposed merging the two bargaining units they represented) would “... only perpetuate and/or accentuate an existing balkanization as [sic] between Scanners and Constables, and this rift is detrimental to the PPS’ organizational objective of having one integrated team.”

[23] The PPS submits that the Board’s general practice when determining bargaining units is to avoid the fragmentation of unionized employees and to organize employees into larger groups wherever possible.

[24] In response to the SPSEA’s submissions that no substantial changes have warranted a change to representation, the PPS counters that its creation brought about a number of significant changes in that scanners now work on the Senate premises and have replaced Senate protection officers in those duties, scanners have replaced the RCMP in the Vehicle Screening Facility (VSF), and new integrated units have been formed.

B. The PPS’s application

1. The PPS’s position

[25] The PPS proposes a single bargaining unit described as follows :

All employees of the Parliamentary Protective Service in its Protective Operations Group, which is comprised of all Constables, Corporals, Console Operators, Sergeants, Scanner Operators and Scanner Supervisors employed by the Parliamentary Protective Service, save and except any members of the Royal Canadian Mounted Police.

[26] The application specifies that the proposed unit is meant to merge the following three bargaining units:

- all employees formerly employed by the Senate of Canada in the Protective Service Sub-Group of its Operational Group (the SPSEA was certified as the bargaining agent on March 24, 1987);
- all employees formerly employed by the House of Commons in its Protective Services Group (the SSEA was certified as the bargaining agent on March 24, 1987); and

- all employees formerly employed by the House of Commons in its Security Services Directorate working as scanners and scanner supervisors (the PSAC was certified as the bargaining agent in 2003 for the scanner group, and an amended certificate was issued on May 27, 2013, to include the scanner supervisors).

[27] The proposed bargaining unit would not include any employee who did not belong to one of those three bargaining units.

[28] The PPS submits that it was created following reports on the October 22, 2014, shooting incident that occurred on Parliament Hill. The OPP's independent report strongly recommended that the different security agencies (meaning the Senate Protective Service, the House of Commons Protective Service, and the RCMP) be united into a single force to deal more effectively with security concerns. The legislative action taken was the enactment of Division 10 of the *EAPA (1) 2015*, which created the PPS.

[29] The PPS's purpose is to function as a single, integrated protective service. As the PPS stated, "Since the three bargaining units are working for a unified employer, the division of labour between distinct employers no longer exists."

[30] The PPS states that it intends to integrate all employees, to offer protective services to Parliament as a whole. The plan is for employees to work in functional teams as opposed to working at either the House of Commons or the Senate, as in the past. The PPS presents its vision as follows :

...

... As such, Constables, Corporals, Console Operators, Sergeants, Scanner Operators and Scanner Supervisors could be deployed anywhere across the parliamentary precinct, Parliament Hill and anywhere else that parliamentary business is conducted. In this context, it will be crucial to break down any barriers between past groups, and to foster a culture where all employees are used to working in a single operational team.

...

[31] From this perspective, scanning operations will be an integral part of the overall security strategy, and scanners will work alongside constables.

[32] The plan is to integrate work schedules, create a single operational management and reporting structure, and implement a single operational support section. The goal is to fully integrate the protective services of the House of Commons and Senate into a single occupational group. That would allow the PPS to fully implement its new security *Parliamentary Employment and Staff Relations Act and Economic Action Plan 2015 Act, No. 1*

model, based on the three pillars of protection, detection, and response, and on a multilayered defensive system.

[33] The integration will streamline operations and will neutralize the perception of different classes of employees, which undermines the cohesion necessary for an optimum security posture.

[34] The PPS argues that its application is consistent with s. 110 of the *EAPA (1) 2015*, which mandates the Board to determine bargaining units coextensive with occupational groups, unless the bargaining unit thus determined would not offer adequate representation to the members of the unit.

[35] However, the work of constables and scanners will remain distinct, despite the fact that before the PPS was created, Senate constables performed scanning work, as stated as follows in the application, at paragraph 38 :

38. In addition, Constables in the Senate Protective Service Employees Association perform the same scanning work that members of the Public Service Alliance of Canada performed at the House of Commons. It is anticipated, however, that scanning work will be reorganized, so as to be done by dedicated Scanner Operators regardless of the location where the scanning work takes place. This work will always remain an integrated [sic] part of the Parliamentary Protective Service's security strategy.

[36] The PPS states that there is no indication that the representation for a single bargaining unit would be inadequate. In fact, increasing the bargaining unit's size would likely increase the employees' bargaining power.

[37] In 2003, the scanners' previous employer, the House of Commons, took the position that the scanners should not be in the same bargaining unit as the constables, corporals, and sergeants. However, the work conditions have changed. Now, the scanners wear the same uniform as the constables, and the PPS intends to create a single occupational group. Scanners are now expected to carry out some basic security duties (such as observational detection), and constables will be expected to carry out some basic scanning duties, such as using an electronic wand.

[38] In short, the PPS "... submits that its operations and organizational structure meet the legislative requirements for consolidating the three existing bargaining units into a single bargaining unit."

2. The PSAC's response

[39] The PSAC simply stated that its position was fully stated in its application and maintained that a single bargaining unit would be inappropriate and would not permit the satisfactory representation of the scanners and scanner supervisors.

C. The SSEA's response to the applications

[40] In its response, the SSEA details the duties of the bargaining unit members, which have nothing to do with the duties of the detection service employees. The members of the unit that the SSEA represents are armed, and they provide surveillance, escort, and intervention services. They have to take a physical-fitness test on hiring and maintain their fitness after that. They are active participants in the emergency response plan. They are an integral part of formal ceremonies.

[41] The SSEA states that discussions are under way with the SPSEA, which represents Senate security employees, on an eventual merger of the associations and on an application to merge the two bargaining units. Both associations recognize the community of interest that unites them and acknowledge that the House of Commons and Senate protection officers “[translation] ... constitute a clearly identifiable occupational group”.

[42] However, according to the SSEA, the scanner operator group has nothing in common with the House of Commons and Senate protection officers. Their functions are completely different — they are two distinct occupational groups. In addition, they do not share labour relations interests, since their working conditions are completely different.

[43] The SSEA proposes the following two bargaining units in the PPS:

[Translation]

a. “all Parliamentary Protective Service employees working as protection officers with a rank of constable, corporal, or sergeant”;

b. “all Parliamentary Protective Service officers working as scanner operators and scanner supervisors”.

[44] The SSEA agrees with the PSAC's opinion that the lower number of detection specialists within a single bargaining unit would deprive them of proper representation to defend their rights in collective bargaining.

D. The SPSEA's response to the applications

[45] The SPSEA confirms its interest in merging the two bargaining units that represent protection officers into one (that of the Senate, which it represents, and that of the House of Commons, represented by the SSEA), with a single bargaining agent.

[46] It shares the view of the SSEA and PSAC that the scanner operators bargaining unit, currently represented by the PSAC, should not be integrated into the new bargaining unit.

[47] In its response, the SPSEA contrasts on one hand the similarity of the duties and functions of the protection officers of both houses and on the other the difference between those duties and functions and those of the scanner operators.

[48] Relying on Board jurisprudence, the SPSEA states that certain factors emerge from the decisions when it comes to altering or redefining appropriate bargaining units: the wishes of the employees, the community of interest, and the collective bargaining history of the groups concerned.

[49] The employees represented by the SSEA and the SPSEA have already voted in favour of merging the two units. There is a clear community of interest between the two groups but not with the scanner operators group.

[50] The SPSEA proposes the same bargaining units as does the SSEA. It also proposes that the collective agreements be maintained until they expire.

E. The hearing

[51] The hearing began in November 2017 and continued in April and October 2018 (eight hearing days) before Board Member Stephan Bertrand. Unfortunately, Mr. Bertrand passed away on May 24, 2019. The final hearing days were before me, from November 12 to 15, 2019. The parties agreed to summarize the oral evidence heard by Mr. Bertrand, that is, the evidence received in 2017 and 2018 from the employer witnesses as well as from the SSEA and SPSEA witnesses. The PSAC witnesses testified before me on November 12 and 13, 2019.

[52] The parties noted that the former titles of constable, corporal, and sergeant had changed to become protection officer, protection supervisor, and protection manager, respectively.

[53] The parties also noted that the former titles of scanner and scanner supervisor had changed to become detection specialist and detection supervisor.

III. Summary of the evidence

A. Summaries of employer witnesses

[54] The employer called the following witnesses: Mike Duheme, the PPS's first director; Jane MacLatchy, the PPS's then-current director (in 2017); and Robert Graham, a PPS administrative and personnel officer.

1. Mr. Duheme

[55] Mr. Duheme has been an RCMP member since 1987. In 2015, he was appointed as the PPS's first director. He remained in that position for approximately 15 months, until he was appointed the commanding officer of the RCMP's National Division.

[56] The PPS's challenge was to integrate as one structure what had in the past operated as three entities. Mr. Duheme referred to the PPS's organizational chart.

[57] The PPS is composed of three major sections: 1) Operational Support, which includes physical infrastructure and emergency planning, material and support management, information services, and technical operations; 2) Operations, which includes five divisions related to security activities; and 3) Administrative and Personnel, dealing with facilities, finance, legal matters, human resources (HR), and procurement. Protection officers and detection specialists constitute the staff of Operations.

[58] The five divisions within Operations currently reflect the historical divisions. Division 1 is made up of protection officers working within the House of Commons, Division 2 is composed of protection officers from the House of Commons unit but working in buildings outside the House of Commons, Division 3 is made up of Senate protection officers, Division 4 includes only RCMP members working in the parliamentary precinct, and Division 5 is composed of detection specialists and training services.

[59] Four distinct cultures were in place when the PPS was created: the RCMP, the Senate protection services, the House of Commons protective services, and the detection specialists. Bringing everyone together takes time; Mr. Duheme did not expect it would occur during his term in office.

[60] Mr. Duheme spoke of the PPS's three pillars, which are commonly known in the security world and are protection, detection, and response. He also spoke of the multilayered defensive system that the PPS wishes to implement. He compared it to an onion with concentric layers, the outer ones being intelligence gathering, the inner ones being the people in charge of security within buildings.

[61] Having three different bargaining units means that the PPS has to deal with three different collective agreements, which makes it more complicated to integrate operations.

[62] In cross-examination, Mr. Duheme acknowledged that he did not have to deal with a unionized environment within the RCMP, except for a few times when he dealt with civilian employees who were part of the public service.

[63] Mr. Duheme also acknowledged that RCMP members would never be integrated into the single bargaining unit that the PPS hopes for. RCMP members are not PPS employees. The number of RCMP officers on Parliament Hill has decreased since the PPS was created. The goal was that RCMP members would be only on the Mobile Response Team (MRT).

[64] Mr. Duheme stated that protection officers and detection specialists wear the same uniform but with different badges. The plan was to have a single badge, but the protection officers were dissatisfied since they have to undergo a significant amount of additional training to accomplish their duties, and they wanted a distinct badge to reflect their training and duties.

[65] According to Mr. Duheme, it would be easier to manage and modify schedules if there were a single collective agreement. He did acknowledge that protection officers and detection specialists do not carry out the same duties and that they are not interchangeable.

[66] He gave as an example of successful integration the VSF, despite the fact that it is open 24 hours per day and is staffed with members of the three bargaining units — detection specialists and protection officers from both houses.

2. Ms. MacLatchy

[67] Ms. MacLatchy has been an RCMP member since 1988. She was appointed the PPS's director towards the end of May 2017. On her arrival, the PPS decided that a strategic plan for the next three years would be useful. It was developed in cooperation with division managers and commanders and sets out the following four key priorities :

- protective operation excellence;
- engaged and healthy employees;
- balancing parliamentarians' security and public access; and
- sound stewardship.

[68] According to Ms. MacLatchy, a key problem was the lack of communication and interoperability (at the time of the 2014 incident, there were three different radio channels). It was important for command and control to be unified not only with a single radio channel but also with a single operational command centre (OCC) and better coordination for any emergency response.

[69] Ms. MacLatchy stated that integrating and standardizing resources deployment has been difficult; units are still working in silos. The key to operational excellence is for people to work closely together, with joint briefings and joint exercises, standardized throughout the parliamentary precinct.

[70] Ms. MacLatchy stressed the importance of standard operating procedures (SOPs) to ensure that all sections and all categories of employees work together and know their precise roles, so that there is no confusion should an incident occur.

[71] Ms. MacLatchy gave examples of increased integration within the PPS. Training is now standardized, all PPS protective employees wear the same uniform, and information management systems (the Senate, the House of Commons, and the RCMP) are being standardized.

[72] Relocating the OCC was still a work in progress as there were still three OCCs (the House of Commons, the Senate, and the RCMP). The goal was to have a single OCC, to streamline operational communication capacity.

[73] Radio communications have been integrated so that all protection officers and RCMP officers are on one channel. The detection supervisors were on another channel, but the goal was to have a single channel for everyone.

[74] A Major Events Management Unit was created. All PPS members were trained in areas such as first aid, defensive tactics, gas masks, etc. Ms. MacLatchy also spoke of scenario-based training, in which the trainees learn how to react to an event through a live simulation as opposed to a classroom setting. All employees are to be involved.

[75] Ms. MacLatchy spoke of developing policies, SOPs, and procedures for the PPS. Up to now, there has been a patchwork of policies from the Senate and the House of Commons. The goal is to have uniform policies for the whole of the PPS.

[76] Integration is the goal, and including the detection specialists would ensure complete interoperability. Her vision is to have a protective force that can work anywhere across precincts instead of working in silos. Now, Senate and House of Commons protection officers work only for one or the other institutions, never both. Detection specialists are not quite integrated into either group.

[77] There is a great need to clarify and standardize roles and responsibilities. The PPS is working on job descriptions, classification, and clarifying the roles and responsibilities of detection specialists and protection officers, as well as those of the special units, such as intelligence, training, the MRT, etc.

[78] Ms. MacLatchy stated that she thinks that the RCMP's presence will gradually be reduced, with PPS employees eventually being fully responsible for the MRT that reacts to occurrences such as a shooter in the parliamentary precinct.

[79] She testified that having three bargaining units has made scheduling difficult. The hope would be to standardize scheduling across the PPS and to put the employees on the same schedule, if possible. This would allow consistent deployment both daily and during major events. It would also allow holding joint briefings. It would mean that there would be a more unified team.

[80] It is difficult to build esprit de corps, i.e., team spirit, in an environment of fragmentation. This in turn affects morale, effectiveness, and pride in the organization.

[81] Like Mr. Duheme, Ms. MacLatchy described the VSF as a success. The protection officers and detection specialists work side-by-side on the three security pillars.

[82] The PPS's goal is functional integration. For now, its Operations area has five divisions.

[83] However, things are evolving, and Ms. MacLatchy stated that she hopes to see the work organized by watches, meaning fully integrated watches to cover all shifts, with protection officers from both houses and detection specialists all on the same watch and scheduled as such. This is still at the planning stage and depends on the number of bargaining units the PPS has to deal with going forward.

[84] Having a single bargaining unit would not include the RCMP, but Ms. MacLatchy explained that the long-term goal is to remove the RCMP from protective functions.

[85] In terms of training, although not all training can be common as different skills need to be taught, some of it could be common, such as first aid, CBRNE (chemical, biological, radiological, nuclear, and explosive materials), leadership skills, and wellness issues.

[86] Classification and job descriptions are still being developed. The goal is to create a Protective Operations Group and to remove the division of labour.

[87] That said, Ms. MacLatchy testified that the detection specialists' role is to detect, recognize, and flag behaviour and to work with the protection officers in a "tag team" approach, the purpose being to exclude from the parliamentary precinct weapons and people with malicious intent. She stated that she does not think that the detection specialists feel part of the team, which she would like to change.

[88] Ms. MacLatchy stated that detection specialists often become protection officers; she was aware of 13 such cases.

[89] Ms. MacLatchy acknowledged that protection officers and detection specialists could not carry out each other's functions; nor was that the plan. However, she stressed the importance of an integrated operating environment.

[90] In cross-examination, she reiterated that scheduling is one of the main concerns from having three bargaining units. The other concern is cohesiveness. She did

acknowledge that even with the three bargaining units, considerable integration has occurred, such as with the VSF, radio communications, the intelligence unit, and the major events team.

[91] Also in cross-examination, Ms. MacLatchy acknowledged that the strategic plan did not mention the need or desire for a single bargaining unit; nor were the three bargaining units raised as a challenge. She also acknowledged that the goal of having employees working everywhere in the parliamentary precinct without a clear separation between the units could be accomplished with two bargaining units.

[92] Ms. MacLatchy stated that she has not had much experience with collective bargaining and bargaining agents, except when she was a security coordinator at the Vancouver Olympics. In that role, she had to deal with several police associations. She also dealt with employee representatives at the RCMP, which historically has had no unions. She had also dealt with public service employees in some RCMP units.

[93] Still in cross-examination, Ms. MacLatchy confirmed that the detection specialists undergo extensive detection training that lasts three weeks and that the protection officers are not offered that training; they have another type of training. At this time, there is no joint training, except maybe in first aid.

[94] In short, the purpose of having a single bargaining unit is to unify the PPS and to create more team spirit.

3. Mr. Graham

[95] Mr. Graham is the administrative and personnel officer responsible for finance, HR, Legal Services, and Facilities. He is involved in applying collective agreements. The labour relations team is part of the HR team that reports to him.

[96] Mr. Graham joined the public service in 2005 and has been an executive since 2008. He has about five years' experience working with labour associations and unions. He joined the PPS in 2015.

[97] Mr. Graham explained several aspects of the protection officers' training. They receive 10 weeks of training, 3 weeks of which cover defensive tactics. Recruits have to pass a physical test in advance.

[98] The PPS set up the MRT to bolster response capabilities on Parliament Hill. It is a team of 14, including 9 members of the bargaining unit represented by the SSEA, 2 from the bargaining unit represented by the SPSEA, and 3 from the RCMP (all figures from 2017). The team receives an additional 4 weeks of training in tactics and specialized equipment.

[99] Protection officers assigned to the OCC receive special three-week training.

[100] Mr. Graham spoke of scheduling. The SSEA members have an 8-week rotation and may work either 7- or 11-hour shifts. As of the hearing, the start times were fixed in the collective agreement. The SPSEA members have a 5-week rotation, with a special 3-week rotation for one team, with fixed start times. The detection specialists have a 10-week rotation, with more flexible start times provided in the PSAC collective agreement. (Note: since the hearing was held in 2017, the SPSEA, SSEA, and PPS have modified scheduled start times through collective bargaining.)

[101] The Operations Mobilization Unit (OMU) is responsible for scheduling protection officers and detection specialists in coordination with managers within each bargaining unit.

[102] Different scheduling systems pose a problem when a common endeavour needs to be staffed. A good example is the newly established MRT. It includes both SSEA and SPSEA members, but they do not have the same start times, according to their respective collective agreements. A difference of 15 minutes in start times makes joint briefings rather complicated. Ideally, all MRT members would have the same schedule. The current collective agreements are an impediment (note: again, this testimony was heard in 2017; MRT scheduling problems have since been dealt with through collective bargaining).

[103] Another example is scheduling shifts for the VSF, where members of the three bargaining units must work a 24/7 schedule. Ideally, they would all have the same start time, to allow joint briefings. Mr. Graham is aware of a high number of grievances from the PSAC on scheduling.

[104] One of Mr. Graham's priorities is to ensure a healthy and respectful workplace. At recent town-hall meetings, senior management heard that PSAC members felt discriminated against by members of another union.

[105] As another example, Mr. Graham mentioned that a problem caused by multiple collective agreements is that the uniform provision is inconsistent. Although all PPS protective employees now wear the same uniform, both protection officers and detection specialists, the number of pants provided under the three collective agreements varies — two, three, or four, according to the collective agreement. A single procurement policy would certainly be easier from an administrative point of view.

[106] According to Mr. Graham, having different bargaining units and agents reinforces an “us vs. them” mentality. One of the drawbacks is mobility or specifically, seniority. Several detection specialists have chosen to apply for protection officer positions. However, their years as detection specialists do not count for seniority purposes, which Mr. Graham finds unfair.

[107] He testified to the fact that the PPS is developing a classification system, based on new job descriptions. The plan is to have detection specialists and protection officers, along with their supervisors, in the same unit.

[108] In cross-examination, Mr. Graham conceded that the main scheduling problem for the MRT was caused by the fact that RCMP members worked with protective officers. RCMP members have 40-hour workweeks, while protection officers work 35-hour weeks. Therefore, it was difficult to schedule mixed teams (with two officers per vehicle).

[109] In cross-examination, Mr. Graham stated that scheduling problems for the detection specialists are of a different nature, namely, the unpredictability of the schedule. A detection specialist must refer to the following 3 separate schedules :

- a master schedule, issued every 4 months;
- a change-of-duty schedule, issued 15 days before the shifts are worked; and
- a deployment schedule, issued the day before the scheduled work.

[110] This reflects the fact that although planning is required ahead of time, requirements change, up to the last 24 hours. Members may need to be accommodated to not work night shifts. Every shift requires the presence of at least one man and one woman (for personal search purposes), and to the extent possible, for sound fiscal management, the PPS tries to avoid overtime. At the same time, work hours may change according to House of Commons or Senate requirements, as detection specialists must always be present when the buildings are open to the public.

[111] Mr. Graham was not aware whether the same issues have arisen for protection officers.

B. Summaries of SSEA witnesses

[112] The SSEA called the following witnesses: Pierre Charrette, protection supervisor; Vicki Willcott, protection officer; Stéphane St-Martin, protection officer; and Roch Lapensée, its president.

1. Mr. Charrette

[113] Mr. Charrette is a protection supervisor (he was formerly a corporal) in the House of Commons unit. He was first hired as a scanner operator in 2007, and he became a constable in June 2008. Since 2011, he has provided firearms training. Since 2013, he has been an instructor in defensive tactics (“DTAC”, an RCMP training course on the use of force), CBRNE, and the C-8 assault rifle.

[114] Protection officers take all that training. They must requalify every year in firearms and every three years in DTAC and pepper spray.

[115] The 10-week course for new recruits is provided exclusively to protection officers; no detection specialists take it. Each cohort comprises approximately 24 recruits.

[116] Detection specialists are not armed, so they do not receive this training (35 hours initially, and one half-day per year after that). Firearms must be stored in specially designed lockers in the change rooms. Detection specialists do not have access to those change rooms.

[117] Mr. Charrette explained the MRT training. The team members undergo tactical training provided by the RCMP. The MRT does not comprise any detection specialists.

[118] Mr. Charrette specified that the protection officers’ equipment is quite different from that of the detection specialists (a firearm, pepper spray, an encrypted radio, and a baton). The protection officers have gas masks because they have been trained for gas attacks, but the detection specialists have not been so trained.

[119] Protection officers take a psychological test before hiring, which is not administered to detection specialists.

[120] Mr. Charrette specified that the PPS has a joint graduation ceremony for protection officers and detection specialists. They also have joint first-aid training.

2. Ms. Willcott

[121] Ms. Willcott worked as a scanner operator from 2003 to 2006. She became a constable in the House of Commons in 2006. She is now assigned to the OCC.

[122] At the hearing, Ms. Willcott explained how work schedules function for protection officers. Assignments are announced 4 to 5 months in advance for the 9 operational teams, the CCO teams, the plainclothes officer team, and the galleries team. Most teams have an 8-week rotation; those of the specialized teams vary from 7 to 10 weeks.

[123] In a way, the OCC is the PPS's nerve centre; it relays all communications and emergencies within the PPS. It has a permanent team of 14, all under protection services. The team includes no detection specialists.

[124] Communication between the OCC and the detection specialists takes place through detection supervisors, as they have radios. If a detection specialist notifies that he or she will be absent, the OCC communicates with a detection supervisor to find a replacement. However, the OCC is in charge of replacing a protection officer who cannot come to work.

[125] Training to work in the OCC takes two weeks — one week in class, and one week on the job. The officers who work in the OCC also receive specialized training on alarms.

[126] In cross-examination, Ms. Willcott explained that occasionally, protection officers working a night shift have to perform a cursory inspection of people and property (generally, contractors working at night) because no detection specialists work at night, except in the VSF. Protection officers do not use the scanner (the X-ray machine) or the sensor wand (the Garrett wand).

3. Mr. St-Martin

[127] Mr. St-Martin is a House of Commons protection officer. He was hired as a constable in 2001.

[128] Mr. St-Martin stated that members of Parliament (MPs) and senators do not undergo any detection screening, so they do not interact with detection specialists.

[129] Mr. St-Martin mentioned some duties of protection officers that detection specialists never perform. Detection specialists do not participate in parades, work in satellite offices (where the public has no access), or participate in protecting dignitaries. They are never assigned to the “Turning of the Page” (every day, a protection officer turns one page of the Books of Remembrance that record the names of those killed in combat for Canada, beginning with the War of 1812). Detection specialists are not part of specialized teams such as the MRT, plainclothes officers, or the intelligence team.

[130] Detection specialists do not work outside, only exceptionally, when a crowd arrives for a major event and temporary detection stations are installed or in the VSF.

4. Mr. Lapensée

[131] Mr. Lapensée is a protection manager in the House of Commons protection unit. He was hired as a constable in 1987. He has been active in the SSEA for 24 years and has been its president for almost 10 years.

[132] The SSEA was certified in 1987. Since then, it has negotiated approximately nine collective agreements with the House of Commons. On the date of Mr. Lapensée’s testimony (2018), the SSEA and the PPS had not yet begun collective bargaining for the next collective agreement.

[133] Mr. Lapensée explained that detection stations were installed after the events of September 11, 2001. The SSEA has never represented the detection specialists, who have been represented by the PSAC since 2003. He confirmed that the PSAC and SSEA jointly organized an activity in fall 2017 to protest the PPS’s refusal to bargain collectively with the two bargaining agents.

[134] Mr. Lapensée stated that he is aware of “common table” bargaining, meaning bargaining between the employer and several bargaining agents at the same time. It involved an agreement on economic increases, given the expiration of the relevant collective agreements.

[135] Mr. Lapensée explained the training for protection officers, which is still provided by officers who are freed up for that purpose and never by managers. The training takes for a total of 10 weeks. Officers have to qualify by taking a physical-fitness test before beginning the training.

[136] Three weeks are dedicated to defensive tactics. The training also includes several components, the following in particular: firearms (their use, maintenance, and storage), pepper spray, CBRNE, emergency response techniques, first aid, the laws that apply to Parliament, and interacting with the public and Parliamentarians.

C. Summaries of SPSEA witnesses

[137] The SPSEA called the following as witnesses: Stéphanie Lavigne, a protection officer; Anthony Parsons, a protection manager; and Brian Faust, the SPSEA's president.

5. Ms. Lavigne

[138] Ms. Lavigne was a member of the bargaining unit represented by the SPSEA from 2000 to 2018. She worked in constable posts until 2016, when she joined the PPS's planning section. The Integrated Planning Unit where she worked was composed of an RCMP corporal and a House of Commons protection officer. Her title was "Security Event Planner". In 2017, Major Events (including Planning) moved from Division 5 to Division 4 (under the RCMP's direction).

[139] As the security event planner, Ms. Lavigne was responsible for coordinating security for all events held on Parliament Hill (demonstrations, dignitary visits, Canada Day, public works, etc.). Before the PPS was created, the RCMP handled all exterior security coordination.

[140] Since 2017, the PPS and its Major Events team have been responsible for planning all events on Parliament Hill. There are no detection specialists in the Major Events section.

[141] The Major Events section collaborates closely with the intelligence team, which includes an RCMP member, protection supervisors from divisions 1 and 2, and protection officers from divisions 1, 2, and 3.

[142] Security planning requires dealing with external partners, such as the Ottawa Police, the RCMP's National Division, the City of Gatineau, etc. The only people called to work for major events were members of divisions 1, 2, 3, and 4. Each major event also has a site commander, who is an RCMP member.

[143] The only role detection specialists may play in major events is bag searching. They play no part in event planning.

[144] Event planning takes into account intelligence information (e.g., the unexpected arrival of demonstrators) as well as basic considerations, such as parliamentary privilege (which includes parliamentarians' unimpeded access to the grounds and buildings).

[145] After major events, Ms. Lavigne had to file an "after actions report". Detection specialists may also contribute to these reports to the extent that they participated in the event. If no detection specialists take part in an event, protection officers may be called upon for bag searches.

6. Mr. Parsons

[146] Mr. Parsons is the program manager for the training team, which is part of Division 5. He has been an SPSEA member since 2002. He was a constable for 10 years, then a corporal for 3 years.

[147] He was assigned part-time instructor duties before the PPS's creation. He has been on the training team full-time since then. In 2016, he obtained the newly created subject-matter training specialist position. His duties in that position include planning the training and setting the assessment standards.

[148] The PPS training team is split in two sections: training for protection officers (SSEA and SPSEA members), and training for detection specialists (PSAC members).

[149] Before the PPS was created, Mr. Parsons delivered defensive tactics training, for which he is certified. Since 2017, he has also been certified in firearms training.

[150] Mr. Parsons introduced a document (Exhibit S-6) providing a detailed account of the new recruits' 10-week training program, which can be summarized as follows :

- Week 1: Introduction (legal aspects, arrest powers, behavioural analysis, defensive tactics theory, and firearms theory).
- Weeks 2 and 3: Defensive tactics and firearms training.
- Week 4: Defensive tactics.
- Week 5: Use-of-force training (arrest scenarios, handcuff techniques, the progressive use of force, etc.).
- Week 6: Presentation on the different divisions, and training on wearing a gas mask.
- Week 7: Dress and deportment and drills for different ceremonies.

- Weeks 8, 9, and 10: General review, exams, orientation to the different posts, site visits, and graduation.

[151] Mr. Parsons indicated that one of the presentations, on searching with or without the Garrett wand, is given for information purposes by a detection specialist. Protection officers are not trained to use the wand.

[152] When the PPS was created, police defensive tactics were first taught to the House of Commons protection officers. They are now taught to all protection officer recruits. The idea is to teach recruits useful intervention techniques, using different response scenarios.

[153] Protection officers hired before the program was offered will also be trained in Immediate Action Rapid Deployment (IARD), a police tactic for first responders in high-risk situations. This training will be offered only to protection officers, not to detection specialists.

[154] Firearms training lasts five days. After that, each year, protection officers must be recertified via a half-day refresher course.

[155] Training in the use of handcuffs, pepper spray, baton, high-risk arrests, etc., is provided to protection officers hired before these items were part of their equipment or training. Protection officers need to be recertified every three years for that type of training.

[156] Senate protection officers are no longer trained in using the Garrett wand, which only the detection specialists have used since the PPS was created.

[157] In cross-examination, Mr. Parsons confirmed that protection officers and detection specialists practice together the ceremonial drill for the graduation ceremony. Detection specialists also receive training in situational awareness, ethics, and parliamentary privilege.

7. Mr. Faust

[158] Mr. Faust has been a constable in the Senate since December 2002. He has been the SPSEA's president for nine years and was part of the collective bargaining team before that.

[159] The SPSEA has 125 members, including 6 sergeants (now protection managers) and 7 corporals (now protection supervisors). Five teams work on a 5-week rotation to cover posts 24/7. Each team includes a manager, a supervisor, and between 8 and 12 protection officers.

[160] There is also a team that works from Monday to Friday, with a daily briefing session. Another team, divided into three sub-teams, works a three-week rotation.

[161] Mr. Faust explained the transition that has occurred at the VSF. Before the PPS was created, the RCMP completely controlled the VSF. Later on, detection specialists replaced the RCMP officers to a large extent. The SPSEA filed a grievance, maintaining that protection officers should provide access control. The procedure has since been changed (Exhibit S-11). It is detailed later in this decision, in the description of my site visit.

[162] Mr. Faust explained that before the PPS was created, Senate protection officers were responsible for detection. They no longer perform those functions, save exceptionally when no detection specialist is on duty. At those times, only a cursory bag search is done. Protection officers no longer employ the tools used by detection specialists, mainly the scanner and the Garrett wand.

[163] According to Mr. Faust, the responsibilities of the Senate protection officers have increased since the PPS was created, notably to include demonstration control, protocol visits, special events, etc. Now they are expected to act as would an RCMP officer, i.e., by responding to emergencies.

[164] Mr. Faust testified that detection specialists do not provide emergency response but collaborate with protection officers by providing their expertise, i.e., in detection. According to him, the protection officers and detection specialists have an excellent relationship. They each have their duties, which they carry out in full cooperation.

[165] Mr. Faust emphasized that the protection officers' training is more extensive, especially because they carry firearms. The equipment is different for the two groups. Both wear bulletproof vests, but protection officers also wear a belt with additional equipment: a firearm, handcuffs, pepper spray, an encrypted radio, and a baton.

[166] Only the protection officers have an encrypted radio. The VSF detection specialists also have a radio, as do the detection supervisors, but they use another channel.

[167] The VSF's operation is well integrated. Supervision is provided by protection officers. The decision to allow a vehicle access to Parliament Hill rests with a protection officer, but exchanging information with detection specialists is essential. They can detect threats and explain the nature of the threat to the protection officers.

D. Summary of PSAC witnesses

[168] The PSAC presented the following witnesses: Morgan Gay, a PSAC negotiator; Kyle McCool, a detection specialist and acting detection instructor; and Tobin Senman, a detection specialist and acting detection supervisor.

1. Mr. Gay

[169] Mr. Gay has been a PSAC negotiator for 13 years. He negotiates collective agreements with the employer on behalf of the bargaining units. This requires a solid knowledge of the work of the bargaining units and of the issues of concern to employees. He works with a number of bargaining units and employers, including parliamentary employers (the House of Commons, the Senate, the Library of Parliament, and the PPS). He has been bargaining on behalf of detection specialists (previously, scanners) since 2009.

[170] One of the main issues for detection specialists is scheduling. When he was asked why, Mr. Gay simply answered, "Because it's chaotic." As a result of an arbitral award, some issues were resolved, but not scheduling. According to him, the employer (then the House of Commons) did not understand what the arbitral award meant for relief assignments and seniority order. He added that scheduling remains a source of profound dissatisfaction for detection specialists.

[171] The issue of scheduling arises in a particular manner for detection specialists, as the need for their services varies throughout the year, according to the House of Commons' schedule. When the House rises, fewer detection specialists are needed, and duty schedules are changed. The arbitral award sought to clarify how relief assignments would be handled, but the issue remained.

[172] Collective bargaining has stalled. At first, the PPS did not want to bargain with the individual bargaining units, pending this decision. An October 2018 Board decision forced the PPS back to the bargaining table. The Board Member ruled that the employees were still entitled to bargaining while awaiting a decision on the future structure of the bargaining units. The PSAC and PPS have reached an impasse, and an arbitral board has been appointed to hear them in February 2020.

[173] Mr. Gay stated that the issues to be negotiated for the detection specialists are very different from the protection officers' concerns. The priorities are not the same. Scheduling does not work the same way for protection officers, who work year-round at several posts. The salary grids are not comparable, as the duties are very different.

[174] Mr. Gay repeated what Mr. Graham stated, that detection specialists work according to three different schedules: a master schedule, a quarterly schedule, and a change-of-duty schedule. Contrary to protection officers, detection specialists are assigned hours of work, not posts. The exact workplace may change at the last minute. This uncertainty in assignments (hours and location) generates a great deal of frustration.

[175] Mr. Gay testified that the strained relationship with the former employer, the House of Commons, has only worsened with the PPS.

2. Mr. McCool

[176] Mr. McCool has been a detection specialist with the PPS since 2017. Before that, he worked in pre-boarding screening operations at the Ottawa airport, starting in 2009.

[177] As an acting instructor, Mr. McCool is responsible for providing training to new recruits. He is also involved in their evaluation. The recruits must achieve a 75% average on all assessments.

[178] When applying for a detection specialist position, recruits do the following: submit a resume, take a general knowledge test, attend an interview, and provide a recent health assessment. The detection specialist recruits now take a four-week course (it used to be three weeks), which Mr. McCool reviewed in detail at the hearing (Exhibit P-2).

[179] The training begins with a general orientation to the work and the worksites. The second module details the detection specialist positions. When he was asked, Mr. McCool answered that they are as follows: X-ray (scanning), searching, being the greeter, the VSF, and the intercepted items desk. He confirmed that the detection specialists have no other positions in the PPS.

[180] The training covers a variety of topics. Some are of a more general nature, such as integrity and ethics, dress and deportment, Parliament, and parliamentary privilege. Some are work related, such as radio communication, note taking, and report writing. Most classes relate directly to detection work, covering emergency procedures, behavioural analysis, how to screen people and physical items, VSF procedures, operating the X-ray machine, how to deal with weapons and other dangerous articles, and recognizing weapons, explosives, and explosive devices in X-ray images.

[181] A considerable amount of time is devoted to scenario-based training, so that the recruits experience the different situations that may occur. A good part of the training is focused on X-ray imaging. Both Mr. McCool and Mr. Senman emphasized how interpreting an X-ray image takes considerable training and experience. For this reason, when suspect content is discovered, the detection specialist will alert a protection officer but will remain on-site to explain the imaging to that officer, as image interpretation is a skill that protection officers do not acquire through their training or duties.

[182] Detection specialists must obtain a perfect mark in X-ray detection; if they fail, they are given another chance with a two-hour refresher. Every year, they take a refresher week of training on a specific aspect of their work. This year, it is the X-ray machine. If they fail their recertification, they cannot work the X-ray machine until they succeed. Other topics for refresher week have been manual and wheelchair searches.

[183] Mr. McCool testified that the detection specialists are trained to react to crises in concert with the protection officers. The roles are well defined and play to each group's strength. Detection specialists identify potential threats through specialized detection means, while protection officers react and take action.

[184] In cross-examination, Mr. McCool confirmed that most detection specialists aspire to be protection officers. In his estimation, more than half of those who had trained as detection specialists eventually became protection officers. In his cohort, trained in 2017, 37 graduated from the training program. Of those, only 5 remained as

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detection specialists. The rest became protection officers or found employment elsewhere.

[185] Mr. McCool confirmed that the graduation ceremony is sometimes held jointly for the detection specialists and the protection officers. The ceremonial drill was done with instructors who were protection officers. While protection officers have a ceremonial uniform (used at graduation and for official events), detection specialists do not. They borrow the ceremonial uniform and return it after the graduation ceremony.

[186] Still in cross-examination, Mr. McCool was brought to the scanner operator job description. Under “Working Relationships”, several contacts are listed. For scanner supervisors, it states, “Obtain direction and guidance”. As for constables, corporals, and sergeants, it states, “Share information and issues of concern to facilitate the flow of visitors or address emergency situations.” Mr. McCool was asked if it was accurate. He answered that such concerns would be addressed to the scanner supervisor, not to a constable.

[187] I note that although Mr. McCool did not address it, the same items have become, in the updated job description of detection specialist, “Share information and issues of concern to facilitate the flow of visitors and vehicles or address emergency situations.” From my site visit (more on this later in the decision), it seems that in the VSF at least, detection specialists would have to interact with protection officers to raise a concern; there are no detection supervisors in the VSF.

3. Mr. Senman

[188] Mr. Senman has been a detection specialist since 2007. Currently, he is an acting detection supervisor. He is also a certified trainer. He is the vice-president of his union local.

[189] He confirmed the testimony heard to that point about the difference in equipment of detection specialists and protection officers and the fact that detection specialists work only in buildings where members of the public will meet or see parliamentarians.

[190] At the Visitor Welcome Centre (VWC), there is a rotation of four teams; three have three members, and the fourth has four members. Team 1 starts at 7:30 a.m. and works until 3:30 p.m. Teams 2 and 4 work the 8 a.m. to 4 p.m. shift. Finally, Team 3 works from 9 a.m. to 5 p.m. as a relief team; that is, it covers the other teams’ breaks.

[191] The first team tests all the detection machines. The VWC usually opens at 8 a.m., sometimes earlier, and guided tours begin at 9 a.m. Mr. Senman explained the five areas of work as follows :

- Greeters: as visitors' first contact, they explain the procedure, and having been trained in behaviour analysis, they watch for any sign that something may be wrong.
- Walk-through: they check when the walk-through detector rings, first with the Garrett wand, and if necessary, with a manual search.
- X-ray machine: they look at the x-ray image, analyzing constantly. They may red-flag someone for a further bag search or raise an alarm if necessary.
- Bag search: different reactions occur, according to what is found. Bombs or weapons lead to emergency procedures. Some items may be temporarily confiscated as they are not allowed into the premises, such as tools, noisemakers, pocket knives, etc. Illegal items, such as pepper spray or brass knuckles, are confiscated. The supervisor is radioed, and the item is remitted to the RCMP or MRT for disposal.
- Blue-bag position: items that are temporarily confiscated are placed in blue bags and held until the person exits, at which time they are returned to the person.

[192] When an illegal item is discovered, both the detection specialist and the detection supervisor will fill out a report and enter it into software named "SiteSecure". The detection specialist reports on the item, and the supervisor reports on the visitor information.

[193] Schedules vary depending on whether Parliament is sitting. The VWC is the entrance for the West Block, where the House of Commons is sitting during renovations (expected to last at least 10 years). Detection procedures are also in place where the Senate will sit for the next 10 years, the former Conference Centre. Exceptionally, if the House of Commons sits overnight, detection specialists will screen the people in the galleries.

[194] The only overnight shift for the detection specialists is at the VSF. The day team needs 10 detection specialists; the night team, 4. Detection specialists rarely work outside, except at the VSF. Outside work occurs during major events, such as Canada Day or New Year's Eve, when crowds gather on Parliament Hill.

[195] Mr. Senman confirmed the general scheduling for detection specialists that Mr. Graham and Mr. Gay discussed, although the timelines varied a little. As the acting

detection supervisor, Mr. Senman is directly involved in scheduling, so I believe his evidence is the most compelling.

[196] A draft schedule, with 3-month blocks, is communicated 2 months ahead of time. It allows detection specialists to bid for leave, according to seniority. The OMU decides whether to grant requested leave. The OMU is within the HR department; it produces a rough draft of the schedule. The OMU mainly uses 10-week rotations, representing 350 hours.

[197] The second schedule is the weekly change of duty, communicated about 15 days in advance. It takes into account leave, accommodations, and gender balance. Finally, a supervisor creates a daily deployment schedule to cover all posts that is released one day in advance.

[198] There are 12 detection supervisors for 10 teams. Each team has a supervisor; the other 2 are an administrative supervisor, assisting the manager of detection services, and a training supervisor. On any given day, about 5 or 6 supervisors are on duty. Detection specialists refer problems or concerns to their supervisors if they are on duty and otherwise to the supervisor on duty at the time. The supervisor's first task is ensuring that all posts are covered and then authorizing overtime if unplanned leave occurs.

[199] When he was asked if the supervisors attend briefings with the protection officers, Mr. Senman answered that it occurs if there is a special event but not regularly.

[200] Mr. Senman stated that training has much improved since he was first hired in 2007. At that time, it was a weekend course, then 35 hours of on-the-job training on the X-ray machine and the Garrett wand. The tasks have not really changed since then, except for technological improvements. The other major change for detection specialists has been working at the VSF, since 2015. In 2007, 35 detection specialists worked in 4 or 5 buildings; now, over 120 work in some 12 buildings.

[201] Since the PPS was created, ongoing training has been implemented. While at first, there was no recertification, it is now required every two years, on the X-ray machine. In addition, every year there is one week of training on tools and techniques. When Mr. Senman started working for the House of Commons, training was outsourced. The PPS has created a training cadre.

[202] Mr. Senman testified that the relationship with protection officers has changed slightly since they became armed. They now have an overwatch function, but they still rely on detection specialists for detection. Mr. Senman stated that he thought that the detection specialists' job title had correctly been changed — they truly are specialists, with more advanced technology. According to him, X-ray imaging is difficult to interpret; doing so requires considerable experience.

E. Site visit

[203] The parties organized a site visit for Board Member Bertrand, which took place on April 17, 2019. They offered me the same opportunity, and the visit occurred on November 12, 2019. I will now summarize my observations.

[204] The visit began at the building, which houses locker rooms solely for protection officers. Each padlocked locker has a second locked compartment inside, designed to contain protected equipment — a firearm, ammunition, pepper spray, and an encrypted radio. The locker room also contains firearm unloading stations.

[205] The basement of the building has an entrance reserved for contractors and employees, where generally only protection officers work, despite the presence of detection equipment. Incoming mail has already been scanned at a sorting centre outside the Parliamentary Precinct. It was explained to me that if a contractor appears with materials, the detection equipment (scanner or Garrett wand) is not used, but the person's effects (generally, work tools) are searched. The contractor's vehicle will already have been screened at the VSF.

[206] The parties showed me as an example of an access point the south entrance of the building at 180 Wellington, on Sparks Street. This entrance allows the public to access MPs' offices and committee rooms. Reception is provided by a protection officer who takes visitors' information then directs them to screening by detection specialists, who check their personal effects by sending them through an X-ray machine (scanner). Detection specialists also have a Garrett wand for body searches if visitors trigger the electronic portal alarm. Once the screening has been completed, visitors return to the protection officer station, where they are given a pass. Visitors must be greeted and escorted at all times by a Parliamentary employee. It was confirmed that the procedure is essentially the same in all buildings that grant public access to visitors.

[207] A distinction needs to be made between the two types of the public: visitors who come to appear before a committee, visit their MP, or meet with ministers for lobbying purposes, and tourists who come to explore Parliament and take a guided tour (the West Block and the Senate).

[208] For guided visits to the House of Commons, “tourist” visitors must go to the new VWC, located between the Centre Block and the West Block. Those visitors are immediately directed to detection facilities.

[209] The detection specialists’ locker rooms are housed in the Confederation Building. Their lockers do not include the second locked compartment since detection specialists do not carry protected equipment, and the locker rooms have no firearm unloading stations.

[210] The VSF faces the Confederation Building. The duties are well defined. When a vehicle arrives for entry onto Parliament Hill, the driver is greeted by a protection officer, who relays the relevant information (the driver’s name, the license plate number, and the reason for being on Parliament Hill) to a protection officer inside the station, who verifies the information. Detection specialists check the vehicle using detection equipment; some are stationed outside for vehicle inspection, and some are stationed inside to monitor readings. Detection specialists are responsible for the bollards (exit) and the barriers (entrance). Protection officers in the VSF are on a 10-week rotation, and detection specialists are on a 5-week rotation.

[211] We also visited the OCC, where only protection officers work. It is the nerve centre for emergencies and is mostly a large room filled with screens that show the entire Parliamentary Precinct. Every day, the OCC receives notices of occasional absences requiring replacement. As the witnesses said, the procedure is different for protection officers and detection specialists.

[212] The former Conference Centre was the last building visited. It is the new home of the Senate during the renovations to the East Block. Protection officers handle receptions at the entrance. They direct visitors to the screening facilities, where detection specialists work. Protection officers are stationed throughout the building.

IV. Summary of the arguments

[213] I note that the parties cited decisions rendered by boards that preceded this Board. For the purposes of the arguments and the analysis, I will simply refer to the “Board”, on the understanding that it has had several names since its inception in 1967.

A. For the employer

[214] Despite the fact that the two groups, protection officers and detection specialists, have very different functions, which the employer does not contest, they work toward a common goal: protecting Parliament. Therefore, a single group should be envisioned, united by mandate and constituting the protection services group. Nothing prevents creating specialized subgroups within this group. Detection specialists and protection officers are in the PPS’s Operations group, as shown in the organizational chart. Therefore, under s. 110 of the *EAPA (1) 2015*, which speaks of “occupational groups”, this is a single occupational group.

[215] The employer gave as examples a few Board decisions in which it stated that larger bargaining units are preferable.

[216] In *Parks Canada Agency v. Professional Institute of the Public Service of Canada*, 2000 PSSRB 109, the application dealt with successor rights after a department became a separate agency. The wording of the provisions in the *Public Service Staff Relations Act* was very similar to *EAP (1) 2015* in that the Board had to determine “... whether the employees... who are bound by a collective agreement or arbitral award constitute one or more units appropriate for collective bargaining ...”.

[217] In that case, the employer, the new Parks Canada Agency (“the Agency”), wished to consolidate the several existing bargaining units into two units, along its two program lines, which were development and delivery. The development side interacted more within the Agency, while the delivery side was more public. The Agency believed that there was sufficient community of interest to create two viable bargaining units.

[218] Several bargaining agents had represented different groups within the department before the Agency was created. Some agents were not interested in representing the employees of the new Agency. Three remained: the PSAC, the Professional Institute of the Public Service of Canada (PIPSC), and the Association of Public Service Financial Administrators (APSFA). The PSAC represented the

administrative and labour categories, the PIPSC the professionals, and the APSFA the financial officers (in the FI group).

[219] The Board decided to create a single bargaining unit as the most appropriate unit. It noted that the existing classifications and bargaining unit structures no longer reflected the Agency's specialized work. In addition, teamwork and considerable overlap in the work performed by different groups dictated a more comprehensive bargaining unit structure. The Board's reasoning can be summed as follows by quoting paragraph 136 of the decision :

[136] Given the specialized nature of the mandate and mission of the PCA, we believe that all of its employees share a common bond and abroad [sic] community of interests [sic]. For example, the evidence has shown that, whether in administrative support or scientific fields, all employees value training, development and adequate compensation.

[220] When determining appropriate bargaining units, the Board considers essential the idea of community of interest. It can be expressed in particular through a common goal and by working jointly to meet the employer's core mandate.

[221] The employer maintains that the Board's decision must look to the future, to encourage harmonious labour relations, and it cites *Parks Canada Agency and Public Service Alliance of Canada v. National Capital Commission*, PSSRB File Nos. 142-29-312 and 313 (19940824), [1994] C.P.S.S.R.B. No. 112 (QL).

[222] When the National Capital Commission became a separate agency, the PSAC and PIPSC filed certification applications to be the bargaining agents for the two proposed bargaining units. The NCC asked the Board to declare a single bargaining unit. The NCC had completely restructured its classification plan, based on a system different from the Treasury Board. The multiple occupational groups that NCC employees belonged to were eliminated in the new classification plan, which was based on groupings established according to general criteria applicable to all employees. The bargaining agents expressed doubts about what they deemed was an evaluation plan and not a classification plan.

[223] The Board ruled in favour of the employer and declared a single bargaining unit. It did not rule on whether the plan was one of evaluation or classification, but it acknowledged the new operating methods at the NCC, which were focused on teamwork.

[224] According to the Board, in that case, the issue was not about making the employer's life easier but was ensuring that the bargaining unit would be satisfactory for collective bargaining purposes. Considering the Board's preference for larger units, it was convinced that the employees' interests would be well represented in a single bargaining unit. Overall, the concerns were quite similar (training and career progression).

[225] According to the employer, the party seeking to split up bargaining units has the burden of proving that such a decision would be preferable to maintaining a single unit. In this respect, it cites *Canadian Food Inspection Agency Financial Officer Association v. Canadian Food Inspection Agency*, 2015 PSLREB 68.

[226] When the Canadian Food Inspection Agency (CFIA) became a separate entity, the Board certified two bargaining agents, the PSAC and PIPSC. The financial officers (in the FI group), who had been represented by the APSFA, were now represented by the PSAC. They became increasingly dissatisfied with their PSAC representation, particularly because of the gap in their salaries compared to what the APSFA had obtained (through an arbitral award) for financial officers at the relevant headquarters. Therefore, they created the Canadian Food Inspection Agency Financial Officer Association (CFOA), which applied for the recognition of an FI bargaining unit and accreditation as the bargaining agent for the new unit. According to the PSAC's evidence, its intent in negotiations with the CFIA was to ensure the parity of conditions of employment (compensation and benefits) for all groups with their headquarters counterpart groups.

[227] The CFOA had the burden of proving that the split would be in the interests of better labour relations. According to the Board, the CFOA failed to establish that it would be preferable to create a separate bargaining unit for the FIs at the CFIA.

[228] The employer continues its argument by emphasizing the evidence that according to it shows that the Board should declare a single unit as appropriate for bargaining. Several times, it mentions the expression "cog in the machine" to illustrate the interdependence of PPS protection employees and therefore their common interests. In this respect, it cites *Canadian Union of Public Employees v. Treasury Board (Royal Canadian Mounted Police)*, 2017 FPSLREB 36 ("*CUPE v. RCMP*"), in which the Board deemed that the employees of three proposed units performed essentially the same work and therefore should be in the same unit. I cite the following from that decision :

...

87 The evidence has clearly established that both TOs and IMs have more commonality of interests than differences. While it is true that they serve different stakeholders, since TOs serve the public and IMs serve internal clients, the nature of their duties is evidence of the community of interest and common goal. In these circumstances, they are working jointly to ensure that the employer's core mandate is met. The community of interest exists in the common goal. The applicant has not convinced me that TOs and IMs do not share a community of interest. There is sufficient community of interest based on each cog in the "machine" being essential to the machine's overall viability

...

[229] Mr. Duheme insisted that unifying the protection services was crucial for them to function smoothly, to achieve the PPS's three pillars : protection, detection, and response. Protection officers and detection specialists work together to meet that threefold mandate. They wear the same uniform and work towards the same goal.

[230] The PPS's objective, as demonstrated by all the employer's witnesses, is to achieve the full integration of protection services. According to the employer, the operations constitute a single unit. Still according to the employer, the very idea of creating the PPS after the October 22, 2014, incident was the need to ensure cohesion among the different groups responsible for security, including the detection specialists.

[231] According to the employer's witnesses, having to deal with three different groups governed by three collective agreements hampers the employer's operations. The witnesses spoke in particular about the different schedules.

[232] Furthermore, the testimonies of the bargaining agents' witnesses demonstrate the interdependence between the roles of the two groups. This interdependence is in line with integration into a single group for administrative purposes, such as collective bargaining.

B. For the SSEA

[233] According to the SSEA, the burden of proof in this case rests entirely with the employer. The Board must rule on the application to combine the existing bargaining units into one. The two groups who would be thus merged do not perform the same duties and do not share the same bargaining concerns.

[234] The creation of the PPS followed recommendations to unify operations to better ensure the security of Parliament. No recommendations were made about the bargaining units.

[235] The SSEA represents the House of Commons protection officers, while the PSAC has represented the scanner operators (now detection specialists) since 2003. When the PSAC was certified, the House of Commons was opposed to including scanner operators in the bargaining unit for protection officers, arguing that they did not share a community of interest. *House of Commons v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 23, confirmed that position and maintained the separation of the bargaining units.

[236] Given their different work, schedules, and training, the issues are not the same for detection specialists and protection officers. In fact, the differences have become greater over time, with the increased specialization of both groups. According to the evidence, the main concern for detection specialists is schedules. This issue has essentially been resolved for protection officers. The difficulty with schedules for detection specialists reflects the fact that their working conditions are very different.

[237] The PPS did not submit a classification plan that would justify including detection specialists in the protection officers' bargaining unit. Since its inception, the PPS has instead chosen to organize its operations into five divisions. Protection officers and detection specialists are not in the same division.

[238] Despite the PPS's declared objective of unifying all operational employees in the same bargaining unit to create esprit de corps, one of the divisions, the one that groups the RCMP members, can never be integrated into the bargaining unit, since RCMP members report to another employer and work under contract for the PPS. However, their involvement in security operations is much more similar to that of the protection officers than is that of the detection specialists.

[239] It is clear from the evidence that detection specialists and protection officers are not interchangeable. They carry out different work and do not work the same hours. Detection specialists report to their supervisors except in an immediate emergency. They are not part of specialized teams such as the intelligence team, the OCC, the MRT, the planning team, or the prime minister's protection team. There are protection officers where the detection specialists work, but not vice versa. Given the diversity of their *Parliamentary Employment and Staff Relations Act and Economic Action Plan 2015 Act, No. 1*

duties, protection officers can be found in many places where there are no detection specialists. In emergencies, detection specialists do not have an intervention role.

[240] The training for the two groups is very different, given their respective functions. To move from one group to the other, all the training must be taken.

[241] The employer's motives for creating a single bargaining unit are twofold: to create esprit de corps, according to Ms. MacLatchy, and to make scheduling easier, according to Mr. Duheme. Apart from some vague statements, no connection was made between those concerns and having a single bargaining unit.

[242] If the employees' wishes are considered, it is clear that protection officers agree with being included in a single unit and that detection specialists prefer to keep their own unit, represented by the PSAC.

[243] The bargaining units are maintained by the *EAPA (1) 2015*, and the PPS is a successor employer. As a result, compelling reasons are required to alter the existing bargaining unit structure. That alteration must consider the bargaining history for the different groups and the employees' wishes.

[244] In *Staff of the Non-Public Funds v. United Food and Commercial Workers Union, Local 864*, PSSRB File No. 125-18-78 (19981104), [1998] C.P.S.S.R.B. No. 99 (QL), the Board emphasized the importance of being careful when considering a change to existing bargaining structures. It also stated that the decision must be based on solid grounds, which its Chairman Tarte expressed as follows (at page 53) :

... Review applications such as this one for the consolidation of long-standing bargaining units must be approached with caution.

In such a case, strong and cogent evidence is required to justify altering an existing bargaining structure which appears to have worked well over many years. Put more succinctly, the Board believes that there is a distinction between applications for certification under section 28 of the Act and requests for review of long-standing bargaining structure under section 27. I am not satisfied that the applicant has presented such evidence in this case....

[245] With respect to the employees' wishes, the SSEA's opinion is that the case law of the Supreme Court of Canada on freedom of association, particularly the *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 (MPAO), ruling, has considerably heightened this concern for labour relations boards. The SSEA provides the *Parliamentary Employment and Staff Relations Act and Economic Action Plan 2015 Act, No. 1*

example of *Syndicat des employées et employés professionnels-les et de bureau, section locale 574 (SEPB) CTC-FTQ c. Association syndicale des employés(es) de production et de services (ASEPS)*, 2017 QCCA 737 (“*Renaud-Bray*”), in which the Quebec Court of Appeal insisted on the importance of considering employees’ wishes in the context of union certification.

[246] In *House of Commons*, the House of Commons sought to combine all its employees into a single bargaining unit. The Board declared that its analysis had to be conducted in two stages: first, it had to decide whether significant changes had occurred that had made the structure of the bargaining units unsatisfactory, and if so, the structure that should replace it in the interests of labour relations.

[247] In this respect, the SSEA quotes as follows from *Professional Institute of the Public Service of Canada v. Treasury Board*, 2006 PSLRB 61, which sees community of interest and duties performed as important indicators when determining appropriate bargaining units:

...

[65] The key element and essential purpose behind the determination of the appropriateness of a bargaining unit and of its composition is collective bargaining and representation. For this reason, this Board is guided by the community of interest behind group members, by the duties performed, as well as the employer’s determination of occupational groups.

...

[248] It is important to emphasize that the Board explicitly states that the goals of determining a bargaining unit are collective bargaining and representation.

[249] In this case, the evidence shows that the two groups responsible for Parliamentary protection (besides the RCMP, as its members are not PPS employees) have become specialized over the years and that their functions, although complementary, have become increasingly divergent.

[250] The changes have not brought the groups closer. In addition, from the perspective of representation, there is no reason to change a structure that the existing units have already, and for some time, proven appropriate for bargaining.

[251] The employer’s arguments in favour of a merger are insufficient. It speaks of schedules, but it is clear that the two groups’ schedules will always be different, because

of their functions. In addition, the employer seems to confuse the bargaining units' structures and the collective agreements' contents.

C. For the SPSEA

[252] The SPSEA fully supports the SSEA's arguments but highlights the following additional points.

[253] According to the SPSEA, the employer erred by presenting its merger application as a *de novo* application, since the PPS is a successor employer that inherited an existing structure. As a result, as the Board emphasized in *Staff of the Non-Public Funds*, the criteria that apply are different from those of an initial application for the recognition of a bargaining unit, since this involves altering the structure. Therefore, the employer had to show that the current structure does not ensure satisfactory employee representation. The PPS was created in response to a need to streamline protection services. That has nothing to do with collective bargaining.

[254] The evidence clearly shows the degree to which the functions of detection specialists and protection officers differ. Mr. Senman stated it clearly in his testimony, and he was not contradicted on that point: the duties of each group are becoming more and more specialized and different. The gap that has always existed is only increasing. Protection officers are now armed, which represents a new level of responsibility. They are now responsible for emergency response duties.

[255] For their part, detection specialists have never had, and continue not to have, emergency response duties. That said, their work is essential to that of protection officers when it comes to identifying suspicious materials or objects. Their roles are simply very different.

[256] The employer's witnesses were unable to explain how the bargaining structure would cause operational difficulties. The SSEA and SPSEA collective agreements were changed to make schedules more flexible, to facilitate the MRT's work. The schedule issue for detection specialists is quite different and unique to them.

[257] The employer provided the VSF as an example of a successful integration, which was achieved through a precise definition of the roles of detection specialists and protection officers in the VSF. In other words, team spirit is driven by work organization, not collective bargaining.

[258] From a labour relations perspective, the integration of the approximately 150 detection specialists with the protection officers group, which numbers about 400, would not be in the detection specialists' interests. Their working conditions, which are very different from those of the protection officers, would not be a high priority at the bargaining table.

[259] The employer spoke about encouraging the mobility of detection specialists who wish to become protection officers. This does not settle the issue of seniority, which is difficult to transfer between two such different occupations. The mobility and seniority issues mentioned by the employer would not be resolved; on the contrary, they would be exacerbated.

D. For the PSAC

[260] The PSAC submitted an application under s. 108 because it had already indicated its intention to bargain to the previous employer, the House of Commons. The issue before the Board is determining the appropriate bargaining units. The PSAC's application adds another issue: Who will the bargaining agent be?

[261] To address the issues raised, it is important to carefully consider the wording of s. 110. The *EAPA (1) 2015* requires the Board to consider the classification of the groups and subgroups established by the PPS.

[262] Yet, the PPS did not submit any classification plan to the Board and has not defined the groups and subgroups. It submitted only a definition plan for the protection operations group. Its plan does not consider the employees' wishes, which is inconsistent with freedom of association as defined by the Supreme Court of Canada. Nor does it take into account community of interest, which reflects the nature of the work and the conditions of employment. It ignores the labour relations history at the House of Commons.

[263] The evidence is consistent from all the witnesses: detection specialists and protection officers do not carry out the same work, and the differences have become greater since the PPS was created. The training for the two groups is entirely different because the process of qualifying for the work is different. Of course, there are a few things in common, given that the workplace, i.e., Parliament, is the same. Yet the functions performed are utterly different.

[264] The two groups do not use the same equipment, for which each group receives in-depth training — firearms and intervention tools for the protection officers, and detection machines (the X-ray machine and the Garrett wand) for the detection specialists. The same is true for the techniques that the two groups learn, which are focused on defence and intervention for the protection officers and on searches for the detection specialists.

[265] The employer adduced no evidence that merging the bargaining units would improve cohesion, which, in any case, is not the objective of union representation. The objective, as stated in s. 110, is the “satisfactory representation of the employees” who belongs to a bargaining unit.

[266] In closing its arguments, the PSAC quoted a sentence from *Canada Customs and Revenue Agency v. Association of Public Service Financial Administrators*, 2001 PSSRB 127, a case that also dealt with the composition of bargaining units following the creation of a new employer. The facts are completely different, but the sentence does reflect the PSAC’S arguments. It reads as follows (at paragraph 527): “The creation of two groups is logical and sound from a workplace organization perspective and takes into consideration the historical bargaining agent affiliations ...”.

[267] The PSAC asked the Board to determine two bargaining units for protection employees at the PPS, one composed of the protection officers, the other of the detection specialists. It would represent the second unit.

V. Confidentiality order

[268] The Board’s general policy is to hold hearings in public and to allow the public to consult its files, including the exhibits filed as part of a hearing. The Supreme Court of Canada affirmed the importance of the public nature of judicial debates in *Dagenais v. Canadian Broadcasting Corporation*, [1994] 3 SCR 835. In *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, the Supreme Court of Canada, while reiterating the importance of the public nature of judicial and quasi-judicial matters, set out the conditions that apply to a confidentiality order: 1) one is necessary to protect a significant interest, and 2) its salutary effects outweigh its deleterious effects.

[269] In the context of cases heard by the Board, two significant interests generally surface when the Board contemplates a confidentiality order: the security and protection of information the disclosure of which would cause more harm than can be justified by *Parliamentary Employment and Staff Relations Act and Economic Action Plan 2015 Act, No. 1*

the principle of the public nature of the Board's files. For example, individual personal information (a home address, a social insurance number, etc.) can be important for identification purposes in a file but has no relevance to the transparency and intelligibility of a decision. Its disclosure could cause harm to someone, while the disclosure is not required to ensure a public decision-making process.

[270] In the context of these files, the Board Member who began the hearing declared a closed session for its duration and ordered all exhibits sealed. The order was made for the benefit of the parties during the hearing. It would have been made in writing, with a supporting rationale, when Board Member Bertrand made his final decision. Unfortunately, things turned out differently, and I must now make a confidentiality order in the context of the files that were assigned to me in 2019.

[271] As I said to the parties during the hearing, I understand the closed-session order, and I agree with it. It is justified for security reasons. The issue is the composition of the bargaining units at the PPS. One of the basic elements in distinguishing bargaining units is the idea of the occupational group. To define the occupational group, fully understanding the group's duties is essential. The three groups in question are responsible for Parliamentary security. Publicly detailing the operations, facilities, and concerns of the PPS is not in the interests of the safety and security of Parliamentarians, employees, visitors, or the premises. As a result, the closed session was justified.

[272] However, I find it difficult to justify sealing all the exhibits filed, some of which have no impact on security concerns and should be public; for example, the collective agreements. Nevertheless, the file does contain exhibits for which sealing is well founded. The justification is based on the need to maintain the security of Parliament and the people who work there. This need outweighs any possible deleterious effects.

[273] Accordingly, as the following exhibits deal with details of security operations concerning the Parliament of Canada, protecting them is vitally important. As a result, I order the following exhibits sealed: tab 1 of E-1, E-5, E-6, E-7, and S-11. I also order sealed tabs 7, 8, 9, and 10 of the exhibits attached to the PPS's application.

[274] The employer adduced into evidence some photos that show employees at their posts and a photo supposedly showing joint activities by representatives of the different bargaining agents. To ensure the safety of those who appear in the photos, the following exhibits are also sealed: E-1, tab 12; and E-8.

VI. Analysis

[275] The parties agreed to reduce the number of bargaining units at the PPS. The two units that represent the House of Commons and Senate protection officers will become a single bargaining unit. The employer admits that that is the wish of the officers who make up the two units. At the hearing, counsel for both bargaining agents, the SSEA and SPSEA, confirmed the wish of the two associations to merge. Given the community of interests, I am satisfied that the two units combined would be a unit appropriate for collective bargaining. I am prepared to determine a new bargaining unit made up of all protection officers in the Senate and the House of Commons. However, the bargaining agent for this new bargaining unit remains to be certified. In order to ensure continued representation for the members of the newly formed unit, the present structure of two bargaining units will remain in place until a bargaining agent is certified for the new bargaining unit.

[276] The remaining issue is whether detection specialists should also be integrated into the new unit or continue to as a separate bargaining unit, with the PSAC as the bargaining agent. The bargaining agents agree that there should be two bargaining units. The employer has asked the Board to determine a single bargaining unit for protection operations.

[277] The evidence is generally consistent. The employer's witnesses insisted on the importance of encouraging esprit de corps and ensuring the cohesion of the PPS. They admitted to having little experience in labour relations with union representation. They admitted that the work of detection specialists and protection officers is very different and that one cannot do the work of the other. They also admitted that even if the two groups were combined into a single bargaining unit, their duties and responsibilities would remain completely distinct. Finally, the PPS admitted at the hearing that it recognizes the wishes of the SSEA and SPSEA members to form an amalgamated unit.

[278] At the hearing, the employer provided the following figures on the three bargaining units, which include supervisors and managers who are part of the bargaining unit :

- Senate protection officers: 145
- House of Commons protection officers: 245
- detection specialists: 143

[279] The bargaining agents submitted a great deal of evidence to show how the work of detection specialists differs from that of protection officers.

[280] The difference begins with training, the detailed outline of which establishes clearly that the duties of the two groups are not at all the same. Detection specialists are trained in detection, and protection officers are trained in surveillance, protection, and intervention.

[281] The difference is also evident in the fact that protection officers can have several different posts and may be assigned to different services. Besides static surveillance posts, the officers may be involved in the MRT, be assigned to the OCC, or form part of the prime minister's protection team. They are called on to play a protection role during major events and demonstrations. They have a protocol function as part of different ceremonies, such as parades, escorts, or the Turning of the Page Ceremony for veterans. For their part, detection specialists are assigned to detection.

[282] The diversity of the protection officers' roles and the detection specialists' specialization impact their respective work schedules, which cannot coincide, given the differences in their duties.

[283] Finally, the differences between the two occupations are felt day to day. For example, the protection officers are armed, which requires taking precautions in storing their equipment and creates a marked difference in the two groups' locker rooms.

[284] In my view, the evidence clearly shows that protection officers and detection specialists form two separate groups, as reflected by their training and their functions. In addition, the PPS does not contest the difference in their functions or the fact that one cannot do the work of the other.

[285] For PSAC's application, the starting point of the analysis is s. 110 of the *EAPA (1) 2015*, which reads as follows :

110. (1) *For the purposes of paragraphs 103(1)(a) and 108(a), in determining whether a group of employees constitutes a unit appropriate for collective bargaining, the Board must have regard to the Service's classification of persons and positions, including the occupational groups or subgroups established by it.*

(2) *The Board must establish bargaining units that are co-extensive with the occupational groups or subgroups established by the*

Service, unless doing so would not permit satisfactory representation of the employees to be included in a particular bargaining unit and, for that reason, such a unit would not be appropriate for collective bargaining.

[286] As can be seen from reading the section, it applies directly to any application made under paragraphs 103(1)(a) under which the PSAC application was submitted to the Board.

[287] The employer maintains that the workplace should be considered as reflecting a new reality of cohesion and that as a result, it is preferable to contemplate a single bargaining unit, to encourage esprit de corps.

[288] Based on the evidence received, I have a few difficulties with that argument. The lack of cohesion and esprit de corps, which led directly to the creation of the PPS to unify the protection services on Parliament Hill, was not attributed in the relevant reports to the fact that detection specialists were not in the same bargaining unit as protection officers. They all agree about the triggering event, the October 22, 2014, incident that severely affected Parliament. The unification of services serves to streamline prevention and intervention methods by arming protection officers inside Parliament buildings and by creating an emergency response team (MRT) that unites RCMP members and protection officers. When the reports refer to three distinct entities, they mean the protection services in the House of Commons and the Senate along with the RCMP.

[289] In its application, the employer also emphasized the difficulty of moving resources between the House of Commons and Senate protection services. To a large extent, this issue is settled by the parties' agreement to combine the two bargaining units that group the protection officers. The evidence clearly shows that the work of detection specialists cannot be performed by protection officers, and vice versa. The two occupations are too specialized and require in-depth training. Therefore, they are not interchangeable resources. The PPS admits as much in its application when it states that detection work will be reorganized so that it is performed only by detection specialists.

[290] Detection specialists certainly have a very important role to play in the PPS's plan for ensuring Parliamentary security. Having clear and open lines of communication between detection and intervention services is crucial. That said, the desired cohesion in the workplace is achieved through a precise allocation of roles so that each person

knows how to act at all times. This has nothing to do with negotiating working conditions, especially when the working conditions are so different.

[291] The employer talked about schedules as an example of an issue that would be more easily settled if it had to deal with only a single bargaining unit.

[292] Looking again at the schedules example, it is not certain that a single unit would settle anything, given the differences in the working conditions of protection officers and detection specialists. Mr. Senman outlined the complications in scheduling detection specialists because the constraints are different. There has to be at least one man and one woman at each post, start times are staggered to cover entire periods, and shift schedules differ considerably, based on whether a detection specialist is assigned to the VSF or a building with public access. In short, if there had to be a single unit, separate bargaining would still be necessary for detection specialists' schedules. The protection officers' schedules were already changed in collective bargaining in 2018-2019. With the merger of the two bargaining units for the protection officers, the schedules will be able to be negotiated for all members of the amalgamated unit.

[293] In light of the requirements of s. 110, it is appropriate to take a step back and consider whether protection officers and detection specialists constitute an occupational group. The employer maintains that it is so, since they all work to protect Parliament. The bargaining agents maintain that on the contrary, the differences in their respective duties mean that they are two separate occupational groups.

[294] The employer argues that it intends to combine all protection services into a single group, the protection group. However, for the moment, there is no classification plan; nor are there any clear groupings. The only apparent organization is the separation of operations into five divisions, three of which group the protection officers, one the RCMP members, and the fifth the detection specialists (and training services).

[295] Section 110 includes a presumption that the occupational group determines the bargaining units, unless the units do not provide satisfactory representation for collective bargaining. As a result, beyond occupational groupings, it is especially important to determine the structure that would favour the satisfactory representation of employees. In all cases, the bargaining unit members must have a community of interest for effective representation at the bargaining table.

[296] As the Board wrote in *Professional Institute of the Public Service of Canada*, representation is at the heart of determining units appropriate for bargaining: “For this reason, this Board is guided by the community of interest behind group members, by the duties performed, as well as the employer’s determination of occupational groups.”

[297] In *National Capital Commission*, the Board emphasizes that the employer’s convenience is not the priority, as follows (at page 32) :

The employer has gone to great lengths during this hearing to demonstrate the need for a single bargaining unit comprised [sic] of all N.C.C. employees. The employer adduced considerable evidence to show how the goals, mandates and work methods of the N.C.C. have changed over the years. While all of this may be beyond dispute, it relates more to what is convenient to the employer and less to what is an appropriate bargaining unit for the purposes of collective bargaining.

[298] The employer cited *Parks Canada Agency* to show that the Board prefers large bargaining units. In that case, the Agency combined a great number of groups. Whether the Board determined one or two bargaining units, each would regroup “... a broad diversity of work and functions” (at paragraph 130).

[299] In that case, the community of interest was clear in the common plan for an agency in which the different groups had to work together at a common goal. The employer would like to convince the Board that the situation in the PPS is analogous. However, the situations are very different. The presumption in s. 110 was not at play in *Parks Canada Agency*, given the diversity and number of the groups. The presumption plays a role in this case, as it is clear from the evidence that these are two occupational groups, even if the employer wishes to group them into one.

[300] *National Capital Commission* also provides the example of combining several groups into a single bargaining unit. As in *Parks Canada Agency*, the Board chose working in common to achieve a goal as a community of interest factor. The evidence also showed a great deal of interdisciplinary work, which is not the case in the PPS.

[301] The employer provided *CUPE v. RCMP* as an example of combining bargaining units. One of the points that determined the combining of the units was that the work performed by the different units was essentially the same. The similarity of the duties was confirmed in the evidence by the fact that no training was required to move from one group to another, which clearly distinguishes the situation in this case.

[302] In *House of Commons*, the employer (the House of Commons) asked for a merger of all the bargaining units of the House. The Board took as a starting point the lack of evidence of changes that would justify altering the bargaining structure. An interesting point, which the bargaining agents made sure to emphasize before me, was that the House of Commons had initially opposed including the scanner operators (now detection specialists) in the protection services group represented by the SSEA. In 2003, the PSAC was certified for the bargaining unit formed by the scanner operators. The Board in *House of Commons* wrote as follows :

[619] ... However, since the certification of the Scanner Group there has been no evidence of change to the work or operation of the scanning services within the Protective Services that would justify a change of the bargaining unit structure.

[303] Several times, the Board remarks that there was no change to carrying out the work that would mean that the existing bargaining structure was no longer satisfactory.

[304] The same reasoning can be applied in this case. There has been no real change to the work of the bargaining unit members. Of course, there have been changes to the protection service, and new duties have been assigned to the detection specialists; for example, the work in the VSF. But the employer cites the VSF precisely as an example of a successful integration — without the need to alter the collective bargaining structures.

[305] In *Staff of the Non-Public Funds*, the Board reproduces large segments of a decision of the Canadian Labour Relations Board (as it was then named), *Atomic Energy of Canada Ltd. v. International Association of Machinists and Aerospace Workers* (1995), 99 di 37. I quote as follows its conclusion, because it summarizes my reasoning in this case :

...

The employer's case, to put the matter bluntly, has not been made out on the evidence before us... While the company might find it somewhat more convenient to deal with one bargaining agent rather than four in the administration of collective agreements, that consideration does not outweigh, in the circumstances of this particular case, the value of maintaining the traditions of employee representation by the bargaining agents in question here. This is not to say that the institutional interests of the trade unions carry great weight in cases such as this; the Board is, properly, much more concerned with the interests of employees as such, and in the instant case there has not been, as there was in some of the major restructuring cases which have been referred to, any expression of employee dissatisfaction with the present structure, nor has the

employer established that employee interests would be better served, to any significant degree, by a changed structure.

...

[306] Three main ideas emerge from the cited case law. The Board prefers large units, which must also be appropriate for collective bargaining. That is established by considering the community of interest, particularly the duties and working conditions of the employees who make up the bargaining unit or units. The collective bargaining history, if it exists, should also be considered.

[307] In this case, there are two occupations, historically represented by very different bargaining agents. The employer has asked for a merger of the bargaining units, for its convenience. It admits that the two occupations are very different and that the employees cannot move from one occupation to the other without full training.

[308] The employer tried to highlight what the two groups have in common, which are the uniform and the mission to protect Parliament. The convergence ends there. Detection specialists and protection officers do not have the same duties, schedules, or training. They sometimes work together, at public and vehicle access points, but protection officers are assigned to many other posts where there are no detection specialists; for example, static or active posts inside or outside the Parliament buildings (the Senate, the House of Commons, parliamentary buildings other than at the entrance, the gallery, demonstration control, major events security, etc.). In addition, protection officers can be assigned more specialized duties, such as the OCC, the prime minister's immediate protection, the intelligence team, the MRT, and so on.

[309] The groups are very distinct, based on all the evidence received. Does that necessarily entail a need for two bargaining units? In my view, and I agree with the bargaining agents on this point, historic evidence cannot be excluded from the analysis. The fact is that the PSAC has represented the scanner operators, now detection specialists, since 2003. The SSEA and SPSEA represent the constables, corporals, and sergeants who have been responsible for protecting the House of Commons and the Senate since 1987. The employer, created in 2015, maintains that the idea is to create a bargaining unit that corresponds to its mandate. This ignores the idea that it is in fact a successor employer, which inherited established bargaining units.

[310] I accept the *Staff of the Non-Public Funds* decision about the importance of maintaining existing structures unless it is clearly shown that the circumstances justify *Parliamentary Employment and Staff Relations Act and Economic Action Plan 2015 Act, No. 1*

a change to encourage better labour relations. The *House of Commons* decision is in keeping with this.

[311] Reading all the case law submitted by the parties led me to conclude that with all due respect to the Board, determining bargaining units is not a scientific exercise but an expression of the Board's wish to encourage collective bargaining as much as possible. That right is now constitutionally recognized and is granted by federal labour relations legislation, both the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2) and the *PESRA*.

[312] In these circumstances, the employer had the burden of showing that the Board should alter an existing situation in the interest of collective bargaining. The situation will already be considerably changed, due to the merger of the SSEA and SPSEA. The positions within these two units are interchangeable, and the employees now receive the same training. There is no reason not to bargain the same working conditions.

[313] However, the employer did not discharge its burden of showing that the changes that arose with the PPS's creation have brought the protection officer and detection specialist groups closer. It did not present me with any valid arguments in support of a single bargaining unit. *Esprit de corps*, which the employer seeks to instill, is a function of effective task organization. The employer gave as an example the VSF, which already functions optimally, despite the scheduling conundrum. Negotiating with a single bargaining agent would not change anything about this conundrum, since it is clear that the schedules of the detection specialists and the protection officers cannot coincide, given the diversity of their duties. If there are common issues, such as the uniform, which concern both bargaining units, nothing prevents the bargaining agents from sitting down at the same table.

[314] Ms. MacLatchy anecdotally stated that detection specialists do not feel respected by protection officers. It would appear that there could be a hierarchy to the roles.

[315] If that were the case, a forced merger of all the employees into the same bargaining unit would only aggravate the rivalries, since they would then have to compete to see their interests presented as priorities at the bargaining table. The evidence shows that many detection specialists (not all of them) aspire to be protection officers. Being in the same bargaining unit would in no way facilitate transferring from one position to the other. The conditions of entry would remain the same, with the *Parliamentary Employment and Staff Relations Act and Economic Action Plan 2015 Act, No. 1*

requirement for specialized training. The issue of seniority does not come into play because seniority in one position cannot mean seniority in another position, unless the employer wishes to create enormous resentment. Any change of employment involves gains and losses. It is up to each employee to make that calculation.

[316] I listened closely to the SSEA's constitutional argument, according to which the Supreme Court of Canada recognizes in *MPAO* the importance of employees' desire to be represented by a bargaining agent of their choice. *Renaud Bray* of the Quebec Court of Appeal is based on this principle.

[317] I believe that in this decision, it is not necessary to determine the issue. The decision in *Association des membres de la Police Montée du Québec v. Treasury Board*, 2019 FPSLREB 70, which the Board rendered last summer, dampens the idea of employees' wishes being a factor in determining bargaining units. In *Renaud Bray*, Justice Mainville recognized that employees might have to give in to the majority with respect to choosing the bargaining agent. In any event, in this case, there seems to be a happy alignment of the employees' wishes and determining appropriate bargaining units. It could have been different, in that the groups could be so similar that it would be preferable to combine them. In such a case, I do not know how the Board would choose to deal with the employees' wishes compared to a long tradition of favouring large bargaining units.

[318] I had the strong impression that the employer wanted to negotiate with only a single bargaining agent, not two or three. That is not relevant. I have considered the application of s.110 and the Board's general principles, as set out above, regarding the determination of the appropriate bargaining unit. I find that the interests of the detection specialists on one hand, and the interests of the protection officers on the other, are better served by keeping them in separate bargaining units, given the lack of community of interest with respect to their duties, training, working conditions, and schedules, and given the representation that the employees have received from their respective bargaining agents for a number of years. To ensure the satisfactory representation of this distinct community, based on the evidence before me, I find that it is necessary to maintain the separation of the detection specialists and detection supervisors from the protection officers, protection supervisors and protection managers.

[319] As a result, I declare a bargaining unit for the detection specialists and the detection supervisors. The PSAC is certified as its bargaining agent.

[320] For all of the above reasons, the Board makes the following order :

(The Order appears on the next page)

VII. Order

[321] The following exhibits are sealed: tab 1 and tab 12 of E-1, E-5, E-6, E-7, E-8 and S-11. I also order sealed tabs 7, 8, 9, and 10 of the exhibits attached to the PPS's application.

[322] The application in 425-PP-00012 is allowed.

[323] The application in 425-PP-00013 is allowed in part.

[324] The Board determines that two bargaining units are required for protection operations within the PPS.

[325] The Board determines one unit as follows:

All employees of the Parliamentary Protective Service working as detection specialists and detection supervisors.

[326] The bargaining agent for the unit thus defined will continue to be the Public Service Alliance of Canada. A new certificate will be issued.

[327] The Board determines another unit as follows :

All employees of the Parliamentary Protective Service working as protection officers, protection supervisors and protection managers.

[328] This determination is held in abeyance, pending the certification of the bargaining agent.

[329] Any term or condition of employment applicable to the employees in the bargaining unit which was represented by the House of Commons Security Services Employees Association, and, any term or condition of employment applicable to employees in the bargaining unit that was represented by the Senate Protective Service Employees Association, that may be embodied in a collective agreement and that was in force on the date of this decision shall be observed by the Parliamentary Protective Service, House of Commons Security Services Employees Association, and Senate Protective Service Employees Association until otherwise determined by the Board.

February 3, 2020.

**Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board**